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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SHANE BEARD, et al.,

Plaintiffs,

v.

COUNTY OF STANISLAUS, et al.,

Defendants.

Case No. 1:21-cv-00841-JAM-CKD

**PLAINTIFFS' BRIEF, RE:  
WAIVER OF OBJECTIONS TO  
DEPOSITIONS AND UNTIMELY  
ASSERTION OF OBJECTIONS  
AT TRIAL**

**I. Introduction**

On May 10, 2024, counsel for Defendants filed Objections to Plaintiffs' Deposition Designation at Trial (Document 130) ("Defendants' Objections"), arguing, among other things, that:

**"[T]he anticipated proffered testimony is rife with questions that lack foundation, have the witness testify on matters in documents for which they have no personal knowledge and was not proper refreshment, seek expert testimony when none of the defendants are designated as experts by any party, are based on questions that have no factual basis in the facts of this case (and are thus irrelevant), are best left to the jury's understanding of the documents under the best evidence rule, seek the witness to guess or speculate, contains testimony that is either non-responsive to the question or there was not even a question pending."**

1 Defendants have known, as early as February 6, 2024, those portions of  
2 the deposition transcripts for Defendants, April Cobb, Shynelle Jones, and  
3 Stephanie Herrera, that Plaintiffs intended to use at trial. Powell Declaration, ¶  
4 2, Exh. 1.

5 Defendants knew, as of February 8, 2024, those portions of the  
6 deposition transcript for Gloria Solorio that Plaintiffs intended to use at trial.  
7 Powell Declaration, ¶ 2, Exh. 2.

8 Plaintiffs made similar designation for the Deposition of Eric Anderson  
9 on February 19, 2024. Powell Declaration, ¶ 2, Exh. 3.

10 Video clips of the depositions to be used at trial were sent by Dropbox on  
11 April 17, 2024. Powell Declaration, ¶ 2, Exh. 4.

12 Plaintiffs even provided a sample form that the parties could use to  
13 determine what portions of the designated transcripts were the subject of trial  
14 objections. Powell Declaration, ¶ 3, Exh. 5.

15 Plaintiffs respectfully submit that the assertion of a blanket objections to  
16 Plaintiffs' designated portions of the deposition transcripts to be used at trial  
17 are improper for at least two reasons:

- 18 (1) Objections need to be specific to the parts of the deposition transcripts  
19 that are objected to. There is no "wave of the wand" procedure for  
20 objecting to evidence under the Federal Rules of Civil Procedure or  
21 the Federal Rules of Evidence; and  
22 (2) Other than objections based on materiality or relevance, the types of  
23 objections that Defendants seek to assert at this late juncture are  
24 untimely and therefore waived.

25 Plaintiffs respectfully request the Court to overrule Defendants'  
26 Objections or, at a minimum, require Defendants to state their objections with  
27 particularity.  
28

## II. Law

Rule 32(d)(3)(A) of the Federal Rules of Civil Procedure provides:

“An objection to a deponent’s competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.”

Rule 32(d)(3)(B) provides:

“An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.”

“It is only necessary to object at a deposition where the ‘form’ of the question (not the nature of the question) is objectionable and a ‘seasonable’ objection would provide an opportunity to correct the form.” *In re Stratosphere Corp. Sec. Litig.*, 182 F.R.D. 614, 618 (D. Nev. 1998). “Questions to which timely objections should be made during the deposition include those which are leading or suggestive; ambiguous or uncertain; compound; assume facts not in evidence; call for a narration; call for speculation or conjecture; or argumentative.” *Id.*

“Objections based on lack of foundation and use of facts not in evidence are deemed waived if not made during a deposition because they “might have been cured if presented at the deposition.” *Sequoia Prop. & Equip. v. United States*, No. CV-F-97-5044-LJO, 2002 U.S. Dist. LEXIS 7541, at \*5, 89 A.F.T.R.2d (RIA) 2002-1435 (E.D. Cal. Feb. 5, 2002), citing *In re WPMK, Inc.*, 42 B.R. 157, 160-161 (Bankr. D. Haw. 1984) and Fed. R. Civ. P. 32(d)(3)(B).



**IV. Conclusion**

Based on the foregoing, Plaintiffs respectfully request the Court to overrule Defendants' Objections. If the Court is inclined to entertain any new objections to Plaintiffs' designated portions of the deposition transcripts, Plaintiffs' request the Court to overrule any untimely objections as set forth above.

Dated: 5/13/2024

**LAW OFFICE OF SAMUEL H. PARK, APC**

By: /s/ Samuel H. Park  
Samuel H. Park,  
Attorney for Plaintiffs